

ASSEMBLY BILL

No. 456

Introduced by Assembly Member Morrell

February 19, 2013

An act to amend Section 17276.20 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 456, as introduced, Morrell. Taxation: deductions: net operating losses.

The Personal Income Tax Law allows individual taxpayers to utilize net operating losses and carryovers and carrybacks of those losses for purposes of offsetting their individual and corporate tax liabilities. Existing law allows net operating losses attributable to taxable years beginning on or after January 1, 2013, to be carrybacks to each of the preceding 2 taxable years, as provided.

This bill would make a technical, nonsubstantive change to this provision.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17276.20 of the Revenue and Taxation
- 2 Code is amended to read:
- 3 17276.20. Except as provided in Sections 17276.1, 17276.2,
- 4 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided
- 5 by Section 172 of the Internal Revenue Code, relating to net
- 6 operating loss deduction, shall be modified as follows:

1 (a) (1) Net operating losses attributable to taxable years
2 beginning before January 1, 1987, shall not be allowed.

3 (2) A net operating loss shall not be carried forward to any
4 taxable year beginning before January 1, 1987.

5 (b) (1) Except as provided in paragraphs (2) and (3), the
6 provisions of Section 172(b)(2) of the Internal Revenue Code,
7 relating to amount of carrybacks and carryovers, shall be modified
8 so that the applicable percentage of the entire amount of the net
9 operating loss for any taxable year shall be eligible for carryover
10 to any subsequent taxable year. For purposes of this subdivision,
11 the applicable percentage shall be:

12 (A) Fifty percent for any taxable year beginning before January
13 1, 2000.

14 (B) Fifty-five percent for any taxable year beginning on or after
15 January 1, 2000, and before January 1, 2002.

16 (C) Sixty percent for any taxable year beginning on or after
17 January 1, 2002, and before January 1, 2004.

18 (D) One hundred percent for any taxable year beginning on or
19 after January 1, 2004.

20 (2) In the case of a taxpayer who has a net operating loss in any
21 taxable year beginning on or after January 1, 1994, and who
22 operates a new business during that taxable year, each of the
23 following shall apply to each loss incurred during the first three
24 taxable years of operating the new business:

25 (A) If the net operating loss is equal to or less than the net loss
26 from the new business, 100 percent of the net operating loss shall
27 be carried forward as provided in subdivision (d).

28 (B) If the net operating loss is greater than the net loss from the
29 new business, the net operating loss shall be carried over as
30 follows:

31 (i) With respect to an amount equal to the net loss from the new
32 business, 100 percent of that amount shall be carried forward as
33 provided in subdivision (d).

34 (ii) With respect to the portion of the net operating loss that
35 exceeds the net loss from the new business, the applicable
36 percentage of that amount shall be carried forward as provided in
37 subdivision (d).

38 (C) For purposes of Section 172(b)(2) of the Internal Revenue
39 Code, the amount described in clause (ii) of subparagraph (B) shall

1 be absorbed before the amount described in clause (i) of
2 subparagraph (B).

3 (3) In the case of a taxpayer who has a net operating loss in any
4 taxable year beginning on or after January 1, 1994, and who
5 operates an eligible small business during that taxable year, each
6 of the following shall apply:

7 (A) If the net operating loss is equal to or less than the net loss
8 from the eligible small business, 100 percent of the net operating
9 loss shall be carried forward to the taxable years specified in
10 subdivision (d).

11 (B) If the net operating loss is greater than the net loss from the
12 eligible small business, the net operating loss shall be carried over
13 as follows:

14 (i) With respect to an amount equal to the net loss from the
15 eligible small business, 100 percent of that amount shall be carried
16 forward as provided in subdivision (d).

17 (ii) With respect to that portion of the net operating loss that
18 exceeds the net loss from the eligible small business, the applicable
19 percentage of that amount shall be carried forward as provided in
20 subdivision (d).

21 (C) For purposes of Section 172(b)(2) of the Internal Revenue
22 Code, the amount described in clause (ii) of subparagraph (B) shall
23 be absorbed before the amount described in clause (i) of
24 subparagraph (B).

25 (4) In the case of a taxpayer who has a net operating loss in a
26 taxable year beginning on or after January 1, 1994, and who
27 operates a business that qualifies as both a new business and an
28 eligible small business under this section, that business shall be
29 treated as a new business for the first three taxable years of the
30 new business.

31 (5) In the case of a taxpayer who has a net operating loss in a
32 taxable year beginning on or after January 1, 1994, and who
33 operates more than one business, and more than one of those
34 businesses qualifies as either a new business or an eligible small
35 business under this section, paragraph (2) shall be applied first,
36 except that if there is any remaining portion of the net operating
37 loss after application of clause (i) of subparagraph (B) of that
38 paragraph, paragraph (3) shall be applied to the remaining portion
39 of the net operating loss as though that remaining portion of the
40 net operating loss constituted the entire net operating loss.

1 (6) For purposes of this section, the term “net loss” means the
2 amount of net loss after application of Sections 465 and 469 of the
3 Internal Revenue Code.

4 (c) Section 172(b)(1) of the Internal Revenue Code, relating to
5 years to which the loss may be carried, is modified as follows:

6 (1) Net operating loss carrybacks shall not be allowed for any
7 net operating losses attributable to taxable years beginning before
8 January 1, 2013.

9 (2) A net operating loss attributable to taxable years beginning
10 on or after January 1, 2013, shall be a net operating loss carryback
11 to each of the two taxable years preceding the taxable year of the
12 loss in lieu of the number of years provided therein.

13 (A) For a net operating loss attributable to a taxable year
14 beginning on or after January 1, 2013, and before January 1, 2014,
15 the amount of carryback to any taxable year shall not exceed 50
16 percent of the net operating loss.

17 (B) For a net operating loss attributable to a taxable year
18 beginning on or after January 1, 2014, and before January 1, 2015,
19 the amount of carryback to any taxable year shall not exceed 75
20 percent of the net operating loss.

21 (C) For a net operating loss attributable to a taxable year
22 beginning on or after January 1, 2015, the amount of carryback to
23 any taxable year shall not exceed 100 percent of the net operating
24 loss.

25 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the
26 Internal Revenue Code, relating to special rules for REITs, and
27 Section 172(b)(1)(E) of the Internal Revenue Code, relating to
28 excess interest loss, and Section 172(h) of the Internal Revenue
29 Code, relating to corporate equity reduction interest losses, shall
30 apply as provided.

31 (4) A net operating loss carryback shall not be carried back to
32 any taxable year beginning before January 1, 2011.

33 (d) (1) (A) For a net operating loss for any taxable year
34 beginning on or after January 1, 1987, and before January 1, 2000,
35 Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified
36 to substitute “five taxable years” in lieu of “20 taxable years”
37 except as otherwise provided in paragraphs (2) and (3).

38 (B) For a net operating loss for any taxable year beginning on
39 or after January 1, 2000, and before January 1, 2008, Section

1 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to
2 substitute “10 taxable years” in lieu of “20 taxable years.”

3 (2) For any taxable year beginning before January 1, 2000, in
4 the case of a “new business,” the “five taxable years” in paragraph
5 (1) shall be modified to read as follows:

6 (A) “Eight taxable years” for a net operating loss attributable
7 to the first taxable year of that new business.

8 (B) “Seven taxable years” for a net operating loss attributable
9 to the second taxable year of that new business.

10 (C) “Six taxable years” for a net operating loss attributable to
11 the third taxable year of that new business.

12 (3) For any carryover of a net operating loss for which a
13 deduction is denied by Section 17276.3, the carryover period
14 specified in this subdivision shall be extended as follows:

15 (A) By one year for a net operating loss attributable to taxable
16 years beginning in 1991.

17 (B) By two years for a net operating loss attributable to taxable
18 years beginning prior to January 1, 1991.

19 (4) The net operating loss attributable to taxable years beginning
20 on or after January 1, 1987, and before January 1, 1994, shall be
21 a net operating loss carryover to each of the 10 taxable years
22 following the year of the loss if it is incurred by a taxpayer that is
23 under the jurisdiction of the court in a Title 11 or similar case at
24 any time during the income year. The loss carryover provided in
25 the preceding sentence shall not apply to any loss incurred after
26 the date the taxpayer is no longer under the jurisdiction of the court
27 in a Title 11 or similar case.

28 (e) For purposes of this section:

29 (1) “Eligible small business” means any trade or business that
30 has gross receipts, less returns and allowances, of less than one
31 million dollars (\$1,000,000) during the taxable year.

32 (2) Except as provided in subdivision (f), “new business” means
33 any trade or business activity that is first commenced in this state
34 on or after January 1, 1994.

35 (3) “Title 11 or similar case” shall have the same meaning as
36 in Section 368(a)(3) of the Internal Revenue Code.

37 (4) In the case of any trade or business activity conducted by a
38 partnership or “S” corporation paragraphs (1) and (2) shall be
39 applied to the partnership or “S” corporation.

(f) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (“prior trade or business activity”), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer’s (or any related person’s) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this

1 state and the taxpayer first commences doing business in this state
2 (within the meaning of Section 23101) after December 31, 1993
3 (other than by purchase or other acquisition described in paragraph
4 (1)), the trade or business activity shall be treated as a new business
5 under paragraph (2) of subdivision (e).

6 (4) In any case where the legal form under which a trade or
7 business activity is being conducted is changed, the change in form
8 shall be disregarded and the determination of whether the trade or
9 business activity is a new business shall be made by treating the
10 taxpayer as having purchased or otherwise acquired all or any
11 portion of the assets of an existing trade or business under the rules
12 of paragraph (1) of this subdivision.

13 (5) "Related person" shall mean any person that is related to
14 the taxpayer under either Section 267 or 318 of the Internal
15 Revenue Code.

16 (6) "Acquire" shall include any gift, inheritance, transfer incident
17 to divorce, or any other transfer, whether or not for consideration.

18 (7) (A) For taxable years beginning on or after January 1, 1997,
19 the term "new business" shall include any taxpayer that is engaged
20 in biopharmaceutical activities or other biotechnology activities
21 that are described in Codes 2833 to 2836, inclusive, of the Standard
22 Industrial Classification (SIC) Manual published by the United
23 States Office of Management and Budget, 1987 edition, and as
24 further amended, and that has not received regulatory approval for
25 any product from the United States Food and Drug Administration.

26 (B) For purposes of this paragraph:

27 (i) "Biopharmaceutical activities" means those activities that
28 use organisms or materials derived from organisms, and their
29 cellular, subcellular, or molecular components, in order to provide
30 pharmaceutical products for human or animal therapeutics and
31 diagnostics. Biopharmaceutical activities make use of living
32 organisms to make commercial products, as opposed to
33 pharmaceutical activities that make use of chemical compounds
34 to produce commercial products.

35 (ii) "Other biotechnology activities" means activities consisting
36 of the application of recombinant DNA technology to produce
37 commercial products, as well as activities regarding pharmaceutical
38 delivery systems designed to provide a measure of control over
39 the rate, duration, and site of pharmaceutical delivery.

1 (g) In computing the modifications under Section 172(d)(2) of
2 the Internal Revenue Code, relating to capital gains and losses of
3 taxpayers other than corporations, the exclusion provided by
4 Section 18152.5 shall not be allowed.

5 (h) Notwithstanding any provisions of this section to the
6 contrary, a deduction shall be allowed to a “qualified taxpayer” as
7 provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6,
8 and 17276.7.

9 (i) The Franchise Tax Board may prescribe appropriate
10 regulations to carry out the purposes of this section, including any
11 regulations necessary to prevent the avoidance of the purposes of
12 this section through ~~splitups~~ *split-ups*, shell corporations,
13 partnerships, tiered ownership structures, or otherwise.

14 (j) The Franchise Tax Board may reclassify any net operating
15 loss carryover determined under either paragraph (2) or (3) of
16 subdivision (b) as a net operating loss carryover under paragraph
17 (1) of subdivision (b) upon a showing that the reclassification is
18 necessary to prevent evasion of the purposes of this section.

19 (k) Except as otherwise provided, the amendments made by
20 Chapter 107 of the Statutes of 2000 shall apply to net operating
21 losses for taxable years beginning on or after January 1, 2000.